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October 4, 2006

**VIA ELECTRONIC FILING/HAND DELIVERY**

The Hon. Kent A. Jordan  
United States District Court  
Federal Building  
844 King Street  
Wilmington, Delaware 19801

**Re: *In re Tricor Direct Purchaser Antitrust Litigation*; C.A. No. 05-340 (KAJ)**  
***Teva Pharm. USA, Inc., et al. v. Abbott Laboratories, et al.* C.A. No. 02-1512 (KAJ)**  
***Impax Laboratories, Inc. v. Abbott Laboratories, et al.*, C.A. No. 03-120 (KAJ)**  
***In re Tricor Indirect Purchaser Antitrust Litigation*; C.A. No. 05-360 (KAJ)**

Dear Judge Jordan:

I am liaison counsel for the Consolidated Direct Purchaser Class Plaintiffs in the above-referenced coordinated antitrust actions (the "Actions"). I write to request the Court's intervention in a late-arising discovery dispute the parties have been unable to resolve, relating to the division of time for examination in certain depositions now shortly scheduled in the Actions. Hopefully this issue can be taken up in the discovery teleconference this Friday morning.

On September 7, 2006, Plaintiffs served counterclaim-plaintiffs Teva Pharmaceuticals USA Inc., Teva Pharmaceuticals Industries Ltd. and Novopharm Ltd. (collectively, "Teva") and Impax Laboratories ("Impax") with substantially similar notices of deposition pursuant to Fed. R. Civ. Pro. 30(b)(6), covering topics relevant to the generic drug manufacturers' development and sale of fenofibrate products.<sup>1</sup> Both Teva and Impax agreed to offer witnesses in response to these notices.

Similarly, on June 29, 2006 and September 22, 2006, Defendants also served Rule 30(b)(6) notices on Teva and Impax, with topics significantly overlapping those included in Plaintiffs' notices.<sup>2</sup> For example, topic 3 of Plaintiffs' notice to Teva requests testimony regarding "Teva's sales and marketing of Generic Tricor, including the dates on which sales commenced and the marketing strategies considered and employed," while Defendants' notice demands a witness to

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<sup>1</sup>Plaintiffs' 30(b)(6) notices are included in Exhibit A, attached hereto.

<sup>2</sup>Defendants' 30(b)(6) notices are included, collectively, in Exhibit B, attached hereto.

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testify on "Teva's marketing plans and actual marketing of any Teva Fenofibrate Product, the persons with knowledge of such plans and marketing and documents which show Teva's marketing plans and actual marketing." (See Defendants' Notice dated September 22, 2006 at Topic 5). Notices directed to Impax display similar overlap.

Both Teva and Impax have begun to designate witnesses in response to these notices, and depositions have been scheduled. By letter dated September 11, 2006, Teva informed the parties that it would be designating a group of witnesses to collectively address these notices and would expect Plaintiffs and Defendants to share time in order to mitigate the burden on these witnesses. At the time, Defendants made no objection to Teva's request. Subsequently, Plaintiffs contacted Defendants to discuss an equitable use of time at these depositions and suggested that the available time be divided equally among the parties. Defendants flatly refused to discuss the issue, asserting baldly that they would "take up to our full allotment of time under the FRCP" and that this was appropriate "[g]iven the fact that plaintiffs sued us."<sup>3</sup> Defendants refused to discuss any arrangement by which the parties could share time at these depositions.

Defendants' position is both an inefficient use of resources and an unreasonable burden on Teva and Impax, whom they apparently would have produce duplicative witnesses for another full day of deposition by the Plaintiffs. Importantly, the other plaintiff groups share a significant need for discovery from Teva and Impax, and they should not be given short shrift based solely upon their position on case caption, as Defendants would have. For example, both Direct and Indirect Purchaser Plaintiffs must demonstrate, *inter alia*, the generic drug manufacturers were capable of developing, manufacturing and selling generic versions of Tricor at the relevant times, and would have, but for the success of Defendants' anticompetitive scheme. See, e.g. Direct Purchaser Class Plaintiffs' First Amended and Consolidated Class Action Complaint ¶¶ 5-7, 9. Moreover, Defendants' position clearly conflicts with the instructions of the Court's July 29, 2006 scheduling order, which requires that:

Plaintiffs' Counsel and Defendants' Counsel of record shall coordinate in scheduling depositions so as to avoid, to the extent practicable, subjecting the same witness (except for Rule 30(b)(6) witnesses who may also have individual knowledge of the subject matter of the Coordinated Actions) to more than one deposition notice in the Coordinated Actions. No witness who is deposed subsequent to the date of the entry of this Order pursuant to a notice of deposition in one or more of the Coordinated Actions shall later be subject to deposition in any of the Coordinated Actions absent leave

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<sup>3</sup>Plaintiffs' and Defendants' correspondence on this topic, via e-mail, is included collectively in Exhibit C, attached hereto.

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of the Court or consent of the witness. Nothing in the Order should be construed to place limitations on the ability of a party to examine a witness at a deposition beyond those imposed by the F.R.C.P. All parties examining a witness at a deposition shall make reasonable efforts to avoid duplicative questioning.

*See* Pretrial Order No. 1 Regarding Consolidation of Direct Purchase Class Actions and Coordination of Direct Purchaser Class Actions with Direct Purchaser Individual Actions and Indirect Purchase Actions, dated July 29, 2006, at sec. IV. B.

Plaintiffs have already worked hard to comply with the requirements of the Court's order. Despite the fact that Plaintiffs in these coordinated cases comprise five distinct entities (or groups of entities) each with specific interests and goals in discovery, we have coordinated our discovery efforts such that no deposition of an Abbott or Fournier employee has exceeded seven hours, without prior agreement of Defendants. Defendants should not be excused from making the same commitment to efficiency and judicial economy where the burden of appearing for deposition falls upon the employees of another party. Accordingly, Plaintiffs respectfully request that the Court instruct the parties that time for the upcoming depositions of 30(b)(6) witnesses produced by Teva or Impax be equally divided between Plaintiffs and Defendants.

Thank you for your consideration of this matter.

Respectfully submitted,

Handwritten signature of Jeffrey S. Goddess in cursive script.

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JSG/cmw  
Enclosures

cc: All counsel of record on attached service list

### **CERTIFICATE OF SERVICE**

I hereby certify that on October 4, 2006 I electronically filed the foregoing document using CM/ECF, which will send notification of such filing to all registered participants, including:

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